

EXHIBIT “J”

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3 _____
4 WAYNE BERRY,)
5 Plaintiff,) CIVIL NO. 01-00446SPK-LEK
6 vs.)
7 FLEMING COMPANIES, INC.,)
8 aka FLEMING FOODS, INC.,)
9 aka FLEMING, DOE)
10 INDIVIDUALS 1-50 and)
11 DOE PARTNERSHIPS,)
12 CORPORATIONS and OTHER)
13 ENTITIES 1-20,)
14 Defendants.)
15 _____)

13 TRANSCRIPT OF PROCEEDINGS

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15 The above-entitled matter came on for Further
16 Jury Trial commencing at 10:00 a.m. on Tuesday, March
17 4, 2003, Honolulu, Hawaii,
18

19 BEFORE: HONORABLE SAMUEL P. KING
20 United States District Judge
21 District of Hawaii
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24 REPORTED BY: LISA J. GROULX, COURT REPORTER
25 Notary Public, State of Hawaii

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A P P E A R A N C E S

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6 FOR PLAINTIFF: TIMOTHY J. HOGAN, ESQ.

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13 FOR DEFENDANTS: LEX R. SMITH, ESQ.

14 ANN TERANISHI, ESQ.

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23 ALSO PRESENT: Ralph Stussi

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I N D E X

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5 DEFENDANT'S WITNESSES:

PAGES

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7 JACK BORJA

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Direct examination by Mr. Smith

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Cross-examination by Mr. Hogan

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12 TERESA NOA

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Direct examination by Mr. Smith

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Cross-examination by Mr. Hogan

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Redirect examination by Mr. Smith

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18 REBUTTAL WITNESSES:

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WAYNE BERRY

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Direct examination by Mr. Hogan

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21

22 EXHIBITS:

MARKED

RECEIVED

23

(None.)

24

25

1 Q. Okay. Now you said the new database. Was
2 there something new about this database as far as you
3 understood?

4 A. No, not new. I mean, it's not new. But new
5 hands, I should say.

6 Q. Okay. Now during this meeting, did Mr. Berry
7 say -- you indicated during API's time several people
8 were making changes to Crystal Reports, right?

9 A. Correct.

10 Q. Did Mr. Berry say anything at this meeting
11 that would indicate that that was going to stop?

12 A. No.

13 Q. Did he say anything at all that would
14 indicate that changes were going to be prohibited in
15 the system?

16 A. No.

17 Q. Mr. Berry drew some diagrams during that
18 meeting, right?

19 A. Yes.

20 Q. Now what did he indicate regarding whether or
21 not computers on the west coast were going to be used
22 to enter and retrieve data from the system?

23 A. Can you repeat that question?

24 Q. Do you recall whether Mr. Berry said anything
25 at this meeting about the system being operated from

1 terminals at Hawaiian Express facilities in
2 California?

3 A. He spoke about the setup of it, you know,
4 where it was going to be and how it connected into our
5 server.

6 Q. So his discussion was explaining how it was
7 going to work in terms of connecting from the west
8 coast?

9 A. Correct.

10 Q. And that that was going to continue to
11 happen?

12 A. Correct.

13 Q. And, in fact, has that continued to happen?

14 A. It has.

15 Q. Is it being used any differently today from
16 the west coast than it was during 1999 when you were
17 an API employee?

18 A. No.

19 Q. Now did there come a time -- immediately
20 after the time that you became a Fleming employee, who
21 employed the people in California who were operating
22 those computers?

23 A. After the --

24 Q. Let me try to set this up again.

25 In October 1999, you became an employee of

1 Fleming, right?

2 A. Correct.

3 Q. And other former API employees also became
4 Fleming employees?

5 A. Correct.

6 Q. And there were still people on the west coast
7 at the Hawaiian Express offices who were entering data
8 into the software system and retrieving data from the
9 system, right?

10 A. Correct.

11 Q. And who was the employer of the people at the
12 Hawaiian Express offices who were doing that?

13 THE COURT: If you know.

14 A. It was Fleming.

15 Q. (By Mr. Smith) Okay. And at some point, did
16 the people who were doing the work switch in
17 California change to Hawaiian Express payroll?

18 THE COURT: If you know.

19 A. They did.

20 Q. Can you explain to the jurors what that
21 situation was or what that change was?

22 A. It was the same -- actually, we let one
23 Fleming personnel go, and the other personnel became a
24 Hawaiian Express employee to perform the same duties.

25 Q. Now who do the people that operate the system

1 in California report to?

2 A. To me.

3 Q. Who is their boss?

4 A. Well, Hawaiian --

5 Q. Start with today. Who do they report to?

6 A. They report to me.

7 Q. Okay. And who did they report to when they
8 were Fleming employees?

9 A. To me.

10 Q. Is there any difference at all in the work
11 that the people do in California now compared to when
12 they were Fleming employees?

13 A. No.

14 MR. SMITH: That's all of the questions
15 I have, Judge.

16 THE COURT: Cross-examination.

17 MR. HOGAN: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. HOGAN:

20 Q. Ms. Noa, your job is dependent upon the
21 freight system; isn't that correct? That if Fleming
22 ceased to use the freight system that API originally
23 had, isn't it true that your job would be in jeopardy?

24 A. No.

25 Q. And why do you say that?

1 A. No.

2 Q. Did Mr. Tsurada ask you?

3 A. No.

4 Q. Now you testified regarding the people at --
5 originally, it was Fleming people that were being
6 allowed to use the system in California; is that
7 correct?

8 A. Correct.

9 Q. And at some point they became Hawaiian
10 Express employees?

11 A. Correct.

12 Q. And then you testified that they still report
13 to you.

14 A. They do.

15 Q. Now are you their supervisor?

16 A. I am.

17 Q. Do you believe --

18 A. If I ever have any -- they listen to me. And
19 if I ever have a problem with them, I just call the
20 next line up.

21 Q. And who would that be?

22 A. Pete Shaw.

23 Q. But they're not Fleming employees; is that a
24 fair statement, ma'am?

25 A. It is.

1 Q. And, in fact, you work with them but they
2 don't actually work for you, do they?

3 A. Well, actually, yes. We get an invoice from
4 Hawaiian Express for \$8,000 a month which is to cover
5 their salaries.

6 Q. To cover their salaries?

7 A. Correct.

8 Q. What are these peoples names?

9 A. Al Perez and Pat Hiroyama.

10 Q. Describe briefly how they use the database?

11 THE COURT: If you know.

12 Q. If you know.

13 A. They're pretty much just gathering
14 information, the bills of lading. The product is
15 delivered to their facility and it's on a bill of
16 lading. They take the information off the bill of
17 lading and they input it into the database. They
18 follow my load plan instructions. I advise them how
19 to load a container. Once that container is loaded,
20 they fax me the load plan, which will show me the
21 container, the seal, the vessel voyage, and the
22 sequence of the orders. I input that information.

23 Q. Okay. But are they able to actually access
24 the database from California?

25 A. Yes.